

HCS HB 641 -- RETAINAGE ON PUBLIC WORKS PROJECTS

SPONSOR: Korman

COMMITTEE ACTION: Voted "Do Pass" by the Committee on General Laws by a vote of 12 to 2.

This substitute specifies that retainage withheld on a public works project cannot exceed 5% of the value of the contract or subcontract. The threshold dollar amount of a public works project that requires a contractor to purchase a security bond is increased from \$25,000 to \$50,000. If the public owner is not required to obtain a bond the public owner may withhold retainage on the project in an amount up to 10% of the value of the contract or subcontract.

The substitute changes from 200% to 150% the amount of an item a public owner can withhold from a subcontractor once retainage is released for each minor item the subcontractor needs to complete. The value of each item is determined by the public owner's and general contractor's authorized representatives. The public owner must pay at least 98% of the retainage, less any offsets or deductions authorized by contract or by law, to the contractor, subcontractor, or supplier after substantial completion of the contract work and acceptance by the public owner. If the public owner determines the work is not substantially completed and accepted, the owner must provide a written explanation of why within 10 days. If this explanation is not given, the public body must pay at least 98% of the retainage within 30 days. If at that time there are any remaining minor items to be completed, an amount equal to 150% of the value of each item must be withheld until the item is completed.

The substitute specifies that when a contractor receives any payment, he or she must pay each subcontractor and material supplier in proportion to the work each completed less any retention up to 5%. If the public owner rejects specific areas of work and does not release the full payment due, the subcontractors and suppliers involved will not be paid for the rejected work as long as the public owner gives a written explanation to the contractor, subcontractor, and supplier involved of why the work was rejected.

The substitute specifies that these provisions must not be construed to require direct payment by a public owner to a subcontractor or supplier, except in the case of default by the contractor on the contract with the public owner where a performance or payment bond is not required or where the surety fails to execute its duties under a bond.

PROPONENTS: Supporters say that this bill eliminates retainage on some public works projects, which in some cases is being held up to two years. The bill's bonding requirements are more than adequate as well.

Testifying for the bill were Representative Korman; Construction Employers Coalition; American Subcontractor Association of Missouri; and Site Improvement Association.

OPPONENTS: Those who oppose the bill say that it does not solve the current problem. Retainage helps with actual project completion and site clean-up and can be a valuable tool.

Testifying against the bill were Missouri Rural Water Association; and Associated General Contractors of Missouri.